IN THE HIGH COURT OF BOMBAY AT GOA.

CIVIL REVISION APPLICATION NO. 137 OF 2002.

The Board of Trustees of
Port of Mormugao, a body
corporate constituted
under the Major Port
Trusts Act, 1963 and
having its office at
Mormugao Harbour, Goa. ... Applicants.

Versus

1. M/s. Ferro Mineral
   Industries, near
   Naval Transmitting
   Station, Dabolim
   Airport, Goa.
2. Mr. Menino Jesus
   Ferrao alias Ferrao
   (since deceased through
   his legal representative:
   (a) Lurio Ferrao, r/at
       Luta Ferrao House,
       Colva, Goa.
3. Mrs. Rita Ferrao,
   Luta Ferrao House, Colva,
   Goa.
4. Mr. Joseph Rodrigues,
   behind Hotel Airport,
   Airport Road, Chicalim,
   Goa.
5. Mrs. Charlotte R. Rodrigues,
   behind Hotel Airport,
   Airport Road, Chicalim, Goa.
6. Shri J.S. Pinto, Retd.
   Suptng. Engineer, Goa P.W.D.,
   Campal, Panaji, Goa. ... Respondents.

Mr. V.B. Nadkarni, Senior Advocate with Mr. Y.V. Nadkarni, Advocate for the Applicants.

Mr. S.G. Dessai, Senior Advocate with Mr. M. Shirodkar, Advocate for the Respondents.

Coram: P.V. HARDAS, J.

Date: 5th October 2002.

ORAL JUDGMENT.

At the request of the learned counsel for the

parties, this Civil Revision Application is taken up for final disposal at the stage of admission.

2. This Civil Revision Application has been filed against the Order passed by the Civil Judge, Senior Division, Vasco da Gama, dated 8th February 2002, in Regular Civil Suit No. 71/1987/A, by the present applicants/plaintiffs. The applicants/plaintiffs had filed suit for declaration, injunction and other reliefs under Sections 9(b) and 41 of the Arbitration Act, 1940. The learned Civil Judge, Senior Division, Vasco da Gama, by his Order dated 21st July 1993 had disposed of the suit which was filed by the plaintiffs by treating it as an application under Section 9(b) of the Arbitration Act as it was wrongly registered as a Civil Suit. The learned Civil Judge, Senior Division, Vasco da Gama, dismissed the application filed by the present applicants. Against the said decision, the applicants/plaintiffs filed Civil Revision Application No. 171 of 1993 before this Court. This Court, by its Judgment dated 15th July 1996, relying on the Judgment of the Hon'ble Apex Court in **U.P. Rajkiya Nirman Nigam Ltd. v. Indure Pvt. Ltd. and others**, A.I.R. 1996 S.C. 1373 and in view of the concession made on behalf of the present respondents, remitted the matter to the learned trial Court to decide whether the claim of the respondents was within limitation. Undisputedly, there

is an arbitration clause and, on the basis of which, the respondents have appointed an Arbitrator.

3. After the matter was remitted to the learned trial Court to decide afresh whether the claim made by the defendants no. 1 with the plaintiffs was within time, the learned Civil Judge, Senior Division, Vasco da Gama, by the Order impugned in the present revision has held that the claim of the respondents no. 1/defendant no. 1 is within limitation and the applicants/plaintiffs were given an opportunity to appoint an Arbitrator from its side, if it so desired, within 90 days. Thus, the learned trial Court rejected the application under Section 9(b) filed by the present applicants, which had been filed on 4th August 1987.

4. I have heard Mr. Nadkarni, the learned senior counsel appearing on behalf of the applicants and Mr. Dessai, learned senior counsel appearing on behalf of the respondents. The learned counsel appearing on behalf of the applicants has urged before me that the Order of this Court dated 15th July 1996 was explicit as it directed the learned trial Judge to decide 'the third ground of attack referred to in paras 25 and 27 of the impugned judgment'. Thus, according to the learned counsel for the applicants, the trial Court has not addressed itself to Clause 15.3.2 of the Agreement,

which mandates that the applicant board shall not be liable to the contractor unless the contractor makes a claim in writing before the giving of the maintenance certificate.

5. With the assistance of the learned counsel for the parties, I have perused the Order of the learned trial Court. The learned trial Court at internal page 4 of its Order in paragraph 6 has referred to the argument in respect of Clauses 15.3.2 and 15.3.4.3 of the contract. After considering the various provisions of the contract, the learned trial Court has come to the conclusion that since the last bill of the defendants no. 1 for escalation was paid by the plaintiffs on 2nd December 1986 and as the defendants no. 1 had made a final claim on 10th December 1986, the claim of the defendants no. 1 was within time as per Clause 15.3.4.3 of the contract.

6. This is a second round of litigation coming up before this Court between the parties. An application under Section 9(b) had been filed by the present applicants/plaintiffs on 4th August 1987. The first Order of the learned trial Court dismissing the application of the applicants/plaintiffs is dated 21st July 1993. Thereafter, this Court by its Order dated 15th July 1996 had remitted the matter to the learned

trial Court. After nearly six years, the learned trial Court by the Order impugned in the present revision application has decided the said application. It is urged before me on behalf of the applicants that, since the learned trial Court has not decided the application in terms of Clause 15.3.2 of the contract, the matter be remitted to the learned trial Court for decision afresh. Since the year 1987 the applicants have been successful in evading to appoint an Arbitrator. The applicants have come to this Court again by this instant revision. Nearly 15 years have passed since the filing of the application under Section 9(b) of the Arbitration Act, 1940. The learned trial Court has applied its mind and has decided the controversy after the matter was remitted to the learned trial Court by the High Court. It is faintly urged by Mr. Dessai, the learned counsel appearing for the respondents, that the question whether the claim is within limitation has to be decided by the Arbitrator and the Civil Court would not have the jurisdiction particularly on an application filed by the plaintiffs under Section 9 of the Arbitration Act, 1940. Be that as it may, the learned trial Court has done the exercise after the matter was remitted to it by this Court. Therefore, according to me, no interference is called for by this Court on the grounds which are urged before me by the learned counsel for the applicants. The further remand to the learned trial Court, at this

stage, would result in delaying the arbitration proceedings. It is needless to mention that the applicants will be entitled to raise all the defences before the Arbitrator as are available under the law. The Arbitrators shall decide the same without being influenced by the observations made either by the learned trial Court or by this Court.

7. In the result, therefore, the Civil Revision Application is dismissed with costs maintaining the direction passed by the learned trial Court directing the applicants/plaintiffs to appoint an Arbitrator from its side, if it so desires, within 90 days from the date of this Judgment. The interim order passed by this Court, therefore, stands vacated.

(P.V. HARDAS)
JUDGE.

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